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COMMENT

Creeping secrecy

Shortly after Ronald Reagan took office, the intelligence agencies quietly began drawing up a new executive order that would make it easier to stamp information secret and keep it secret. Word of various provisions eventually leaked to Congress and journalists, and in March 1982 a House subcommittee called a hearing designed to find out exactly what the order said and how the administration planned to implement it. Since administration officials refused to appear, the subcommittee learned very little.

Thus, until April 2, 1982, when President Reagan signed Executive Order 12356, almost nobody outside the intelligence agencies knew to what degree it represented a change from previous orders. Now, eighteen months later, daily journalists, book authors, historians, and research scientists are learning firsthand that the change is radical indeed.

Executive orders on security classification, the first of which was issued in 1940, have always presented problems for journalists. In the 1970s, however, Presidents Nixon and Carter issued orders that eased up on at least some of the restrictions. The Carter order of 1978 in particular took the view that citizens should know as much as possible about the workings of their government. Officials were ordered to weigh the public's right to know when classifying information, were instructed to use the lowest level of secrecy in doubtful cases, and were permitted to classify information only if they believed that "identifiable" damage to national security would result from its release. Reagan's executive order threw out all these public-access requirements. Government officials are no longer urged to consider the public's right to know, and they are instructed to classify material at the *highest* level of secrecy in doubtful cases. Further, the classifiers are no longer required to demonstrate "identifiable" potential damage to national security. Finally — and amazingly — they are now empowered to reclassify information that has already been made public if they decide that it has become too sensitive.

The intent of the new executive order, according to the administration's Information Security Oversight Office, was not so much to clamp down on information as "to provide better protection for that very small percentage of information that requires it." There is reason to doubt that these words will carry much weight. One military official observed recently, "During the Nixon years and through Carter, you could get in trouble for not *declassifying*. Since Reagan, even before the executive order was in place, the

Last year, at a congressional hearing held after the executive order had been made public but before it officially took effect, which it did on August 1, CBS-TV correspondent Bob Schieffer warned of what the order might do to reporting. He had recently done a piece on the controversial M-1 tank. The new order, Schieffer pointed out, permitted the withholding of documents making reference to "the vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security." His story had disclosed such "vulnerabilities," he said, and he feared that, under the new order, "anything open to criticism . . . in a proposed new plane or tank or bullet would be shielded from scrutiny. . . ." As a result, "our ability to learn how well our money is being spent to arm America would virtually cease."

What Schieffer feared might happen has started to happen. Several lawsuits brought to obtain information that may have been improperly classified have been thrown out by judges since the issuance of the new executive order. Con Hitchcock, a lawyer with the Public Citizen Litigation Group, a Washington, D.C., law firm that has handled several such cases, says that journalists have "pretty much given up" trying to obtain national security information under the Freedom of Information Act. "The government can play the classification trump card any time the going gets rocky," Hitchcock says. "So why bother?"

The case of James Bamford — a book author, not a daily journalist — throws light on how the most radical provision in the new order may close off the sources of information on which reporters draw. Bamford is the author of *The Puzzle Palace*, a best-selling book about the supersecret National Security Agency that was published last year. Even before Reagan's order took effect, the administration tried — unsuccessfully — to reclassify documents released to the author during the Carter years. Foiled in this attempt, the NSA earlier this year sought to make sure that others would not have access to the documents Bamford had studied: the agency did so by removing open research material from a library in Lexington, Virginia, where Bamford had done much of his research, and classifying some of the documents. (A House subcommittee has investigated the incident, but so far has taken no action.)

David Martin, a Pentagon correspondent for CBS-TV, ran into national security information roadblocks as a book

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